



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
WATER

MAR 23 2007

Dr. Mamie Parker
Assistant Director
Fisheries and Habitat Conservation
U.S. Fish and Wildlife Service
1849 C Street N.W., Room 3245
Washington, DC 20240

Brian Arroyo
Assistant Director
Endangered Species
U.S. Fish and Wildlife Service
1849 C Street N.W., Room 3242
Washington, DC 20240

James Lecky
Director
Office of Protected Resources
National Marine Fisheries Service
Building 3, 13th Floor, Room 13821
1315 East-West Highway
Silver Spring, MD 20910

Re: Initiation of formal consultation on EPA's Clean Water Act section 304(a) recommended aquatic life water quality criteria for cyanide.

Dear Dr. Parker, Mr. Arroyo and Mr. Lecky:

Consistent with the Memorandum of Agreement (MOA) we signed in 2001 and our meeting of January 23, 2007, the U.S. Environmental Protection Agency (EPA) hereby transmits the enclosed biological evaluation (BE) to the National Marine Fisheries Service and the U.S. Fish and Wildlife Service (the Services) to initiate formal consultation on EPA's recommended section 304(a) aquatic life water quality criteria for cyanide. Cyanide is the first of 49 recommended section 304(a) aquatic life water quality criteria that we agreed in the 2001 MOA to consult on nationally to provide ESA section 7 coverage for any water quality criteria for



cyanide included in State or Tribal water quality standards approved, or federal water quality standards promulgated, by EPA that are equal to or more stringent than the nationally recommended section 304(a) criteria. We have previously submitted drafts of the cyanide BE to your offices in January 2005, January 2006 and June 2006. In our recent discussions, we agreed that the next appropriate step would be for EPA to forward the final cyanide BE to the Services to initiate formal consultation. We understand that the Services have agreed to accept the cyanide BE as complete with the addition of more detailed explanations on the utilization of different studies and the consideration of six additional species as discussed below.

As required by ESA section 7(a)(2) and 50 C.F.R. §§ 402.14(d), EPA has used the best scientific and commercial data available to evaluate whether EPA's approval of State or Tribal, or promulgation of federal, water quality standards that are equal to or more stringent than the nationally recommended aquatic life water quality criteria for cyanide would jeopardize the continued existence of any federally listed species or result in any destruction or adverse modification of any designated critical habitat. In developing the cyanide BE, EPA has followed the *Draft Framework for Conducting Biological Evaluations of Aquatic Life Criteria: Methods Manual* (BE Methods Manual) that senior technical staff from EPA and the Services developed together to assess the potential effects of water quality standards equal to or more stringent than the recommended cyanide aquatic life water quality criteria on federally listed species and designated critical habitat. It includes a preliminary toxicity screen, a subsequent toxicity assessment, and an exposure assessment in accordance with sections 3.3 and 4.2 of the BE Methods Manual. The references used in preparing the BE are listed after Table 1 in section 4.0 and in the References section of the cyanide BE. Appendix C of the cyanide BE lists the articles that were reviewed but were not used in the effects determination. This is in accordance with our agreed upon procedures outlined in Appendix E of the BE Methods Manual. In addition, I have attached to this letter specific explanations regarding the utilization of specific studies that were mentioned in the comments from your offices dated November 15 and 28th, 2006.

A summary of EPA's effects determinations for the 561 federally listed species covered by EPA's analysis is presented in section 9.0, Risk Characterization: Effects Determination. This includes the effects determinations for six additional species mentioned in your comments: Killer whale, Western North Pacific gray whale, White abalone, Elkhorn coral, Staghorn coral and Green sturgeon. As explained in the cyanide BE, EPA has concluded that approvals of State or Tribal, or promulgations of federal, water quality standards equal to or more stringent than our nationally recommended aquatic life water quality criteria for cyanide are not likely to jeopardize the continued existence of any federally listed species or result in the destruction or adverse modification of designated critical habitat. EPA requests that the Services, in rendering their opinions, concur with EPA's conclusions.

EPA appreciates your support and willingness to work closely with us to move the national consultation process forward. The attached cyanide BE reflects over three years of collaboration with the Services and more than a half million dollars in contractual resource

expenditures. If you have any questions or wish to discuss this matter further, please call me at (202) 566-0413. For technical questions, please have your staff contact Dana Thomas, Ph.D. at (202) 566-1046.

Sincerely,

A handwritten signature in black ink, reading "Ephraim King". The signature is fluid and cursive, with the first name "Ephraim" written in a larger, more prominent script than the last name "King".

Ephraim S. King

Director

Office of Science and Technology

Enclosures